Supreme Court, U.S.
FILED
971396 FEB 17 1998

No. _____

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

OWEN CHARLES,
Petitioner,

v.

MARILYN CHARLES,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Connecticut

---

PETITION FOR A WRIT OF CERTIORARI

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Dated: February 17, 1998

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QUESTIONS PRESENTED

1. Whether under section 6 of the Connecticut Indian Land Claims Settlement Act, 25 U.S.C. § 1755, Connecticut validly assumed civil jurisdiction over the Mashantucket Pequot Reservation even though the State took no formal action to manifest its intent to assume such jurisdiction (in contrast to what the State has done to assume jurisdiction over another reservation within the State), and the Tribe did not formally consent to the State's assumption of such jurisdiction.

2. Whether, in this divorce and custody case, the Connecticut courts erred in failing to abstain in favor of parallel proceedings before the Mashantucket Pequot Tribal Court where: (a) the Tribal Court has jurisdiction to decide the matter; (b) the defendant is an enrolled member of the Tribe who lives on the Tribal Reservation, the child is an enrolled member of the Tribe, the plaintiff is not a Connecticut resident; and (c) the terms of the Connecticut Indian Land Claims Settlement Act, even if construed to vest the State with concurrent jurisdiction, would still require the State to apply principles of Tribal law that do not conflict with State law.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Owen Charles, respectfully petitions for a writ of certiorari to review the judgment of the Connecticut Supreme Court in this case.

OPINIONS BELOW

The opinion of the Connecticut Supreme Court (App. A, *infra*) is reported at 243 Conn. 255. The opinion of the Connecticut Superior Court, reversed by the Connecticut Supreme Court (App. B, *infra*), is unreported but available at 1997 Conn. Super. LEXIS 1259 (May 7, 1997).

JURISDICTION

The judgment of the Connecticut Supreme Court was entered on November 18, 1997. App. A at 1a. No petition for rehearing was filed. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

STATUTES INVOLVED

Section 6 of the Connecticut Indian Land Claims Settlement Act of October 18, 1983, Public Law 98-134, 97 Stat. 851, codified in 25 U.S.C. § 1755 provides:

> **1755. State jurisdiction over reservation**
>
> Notwithstanding the provisions relating to a special election in section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326), the reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in title IV of such Act [25 U.S.C. §§ 1321-1326].

Section 402 of Title IV of the Act of April 11, 1968, the Indian Civil Rights Act codified in 25 U.S.C. § 1322 provides (emphasis added):

> **1322. Assumption by State of civil jurisdiction**
>
> **(a) Consent of the United States; force and effect of civil law**
>
> The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State *to assume, with the consent of the tribe* occupying the particular Indian country or part thereof which would be affected by such assumption [of state jurisdiction] such measure of jurisdiction over any or all such civil causes of action arising within such Indian country . . . to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country . . . as they have elsewhere within that State. . . .
>
> * * * *

(c) Force and effect of tribal ordinances or customs

> Any tribal ordinance or custom heretofore or hereinafter adopted by an Indian tribe, . . . in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

Section 406 of Title IV of the Act of April 11, 1968, the Indian Civil Rights Act codified in 25 U.S.C. § 1326 provides:

1326. Special election

> State jurisdiction acquired pursuant to this title [25 U.S.C. §§ 1321 *et seq.*] with respect to . . . civil causes of action, . . ., shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose.

STATEMENT OF THE CASE

The Mashantucket Pequot Tribe is a federally recognized Indian Tribe with a reservation in Ledyard, Connecticut. App. A at 2a; 25 U.S.C. § 1758(a). Petitioner, Owen Charles, is an enrolled member of the Tribe. App. A at 2a.

On October 23, 1995 the Mashantucket Pequot Tribe adopted a family law ordinance which vested the Tribe's courts with civil jurisdiction over proceedings for dissolution of a marriage. App. B at 15a n. 5. On November 1, 1995, Marilyn Charles, a non-Indian who was and remains a resident of Rhode Island, filed suit in the Connecticut Superior Court against Petitioner seeking dissolution of their marriage, as well as custody of their child, child support and alimony. App. B at 12a-13a. The Petitioner, both at the time of the filing of the Connecticut suit, and since then, has resided on the Mashantucket Pequot Reser-

vation. *Id.* The parties' child is an enrolled member of the Mashantucket Pequot Tribe.

In November 1996, Petitioner moved to dismiss the state court action for lack of personal jurisdiction. App. B at 14a. The motion was denied by the Connecticut Superior Court in March 1996. *Id.* Petitioner appealed that ruling, but the appeal was dismissed by the Appellate Division in September 1996 for lack of a final judgment. App. B at 15a n. 4.

In October 1996 Petitioner initiated a suit in the Mashantucket Pequot Tribal Court against Marilyn Charles seeking dissolution of their marriage, custody and child support. App. B at 15a. Marilyn Charles, through counsel, entered an appearance in the Tribal Court case, *id.* at n. 5, and filed an answer to the complaint admitting all allegations of the complaint. Marilyn Charles did not challenge the Tribal Court's jurisdiction, but filed a motion with the Tribal Court for a stay pending disposition of the proceedings in the Connecticut courts. *Id.* She has further moved in the Tribal Court for alimony pendente lite as well as custody and child support pendente lite.[1]

By motions filed with the Connecticut Superior Court in October 1996 and March 1997, Petitioner, represented by new counsel, sought to dismiss the state court action for lack of jurisdiction. App. B at 16a. By opinion and order entered on May 7, 1997, the Connecticut Superior Court granted the motion to dismiss, finding that it lacked jurisdiction over a suit for dissolution of a marriage brought by a nonresident of the State, against a tribal member living on the Reservation. App. B at 27a. The Court found that a trial member's domicile on the Reservation, alone, was not a sufficient contact with the State to give the State subject matter jurisdiction. *Id.* In dismissing the action, the Court further noted the potential availability

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[1] We are lodging a copy of the record of the proceedings in the Tribal Court with the Clerk of this Court.

of the Mashantucket Pequot Tribal Court as a forum for resolution of this matter. *Id.*

Marilyn Charles appealed the Superior Court's May 7 decision to the Connecticut Appellate Court, and the case was shortly thereafter transferred to the Supreme Court of Connecticut. App. A at 2a. The Supreme Court of Connecticut, by a decision issued on November 18, 1997, reversed the Superior Court's ruling. App. A at 2a-3a. The Court reasoned that "[t]he Superior Court has exclusive jurisdiction of all complaints seeking a dissolution of marriage," and that Connecticut statutes imposed a residency requirement "satisfaction of which is essential to confer on the court subject matter jurisdiction." App. A at 3a (footnote omitted). Because the plaintiff in the case was not a Connecticut resident, the Court held that state court jurisdiction could only be satisfied if the defendant—a tribal member living on the Reservation—were deemed a resident of the State. *Id.* The Court concluded that he was and that as a matter of state law the Superior Court had jurisdiction in the case. *Id.* at 11a.

The Connecticut Supreme Court further concluded that the federal statute governing Connecticut's jurisdiction over Indians on the Mashantucket Pequot Reservation—the Connecticut Indian Land Claims Settlement Act, 25 U.S.C. § 1755—vested the State with civil jurisdiction to adjudicate a divorce proceeding brought against an Indian residing on the Mashantucket Pequot Reservation. App. A at 3a-4a, 11a. Although the Settlement Act incorporates by reference the requirements of Public Law 280 as amended —under which the United States permits, but does not require, a State to assume jurisdiction over Indian country provided, however, that any such assumption of jurisdiction by the State be with the consent of the Tribe—the Connecticut Supreme Court concluded that under the Settlement Act, Tribal consent was not needed. App. A at 4a, 6a-11a. The Court did not address the need for any formal

act of the State of Connecticut assuming the jurisdiction offered by Congress.[2]

In holding that the State may exercise civil jurisdiction on the Reservation, the Connecticut Supreme Court reasoned that because the Settlement Act expressly excluded the requirement that a "special election" be used to manifest tribal consent to a state's assumption of jurisdiction, as set out in the 1968 amendments to Public Law 280, 25 U.S.C. § 1326, the Settlement Act eliminated *all* requirements for Tribal consent to state jurisdiction, including that which *separately* appears in another section of Public Law 280. That separate section, 25 U.S.C. § 1322(a), sets the procedures by which a state may agree to assume civil jurisdiction over Indian country and requires both "the consent of the tribe" and a state assumption of jurisdiction. *See* App. A at 7a-8a, 9a.

REASONS FOR GRANTING THE WRIT

I. THE CONNECTICUT SUPREME COURT RESOLVED INCORRECTLY AN IMPORTANT QUESTION OF THE STATE'S CIVIL JURISDICTION OVER INDIANS ON THEIR RESERVATION.

This case, like *Williams v. Lee*, 358 U.S. 217, 218 (1959), raises an "important question of state power over Indian affairs"—whether a state court may exercise jurisdiction over a civil suit brought by a non-Indian against an Indian living on the reservation. This turns on the interpretation of a federal statute, and the quintessential federal question of a state's authority to assert jurisdiction over Indians on a reservation. Because it has significant long-term effects on the relationship between the State of Con-

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[2] Our search of Connecticut law reveals no act by which the State formally undertook to assume jurisdiction over the Mashantucket Pequot Reservation, although, as discussed *infra*, the State *did* enact a statute to assume criminal jurisdiction over another Indian reservation—the Mohegan Reservation—in order to implement the jurisdictional provisions of a federal settlement act involving that tribe.

necticut and the Mashantucket Pequot Tribe, this case warrants Supreme Court review.

II. THE CONNECTICUT SUPREME COURT MISCONSTRUED THE CONNECTICUT INDIAN LAND CLAIMS SETTLEMENT ACT.

The Court's construction of the Connecticut Indian Land Claims Settlement Act to conclude that the State had civil jurisdiction over the Mashantucket Pequot Reservation, in the absence of any formal act by the State assuming such jurisdiction or consent by the Tribe, is in clear conflict with established precedent of this Court.

The jurisdictional provision of the Connecticut Indian Lands Claims Settlement Act, 25 U.S.C. § 1755, expressly incorporates by reference the requirements of Public Law 280 as amended in 1968. Public Law 280 effectively imposes three preconditions to a state's assumption of jurisdiction over Indian country. First, the United States must give its consent, and such consent is reflected in the terms of both the Settlement Act and Public Law 280 itself. *See* 25 U.S.C. §§ 1755, 1322(a). Second, the State must take some formal action[3] manifesting its intent to assume or assert jurisdiction over the Reservation—beyond simply the exercise of jurisdiction at the behest of a private party in a particular civil action. 25 U.S.C. §§ 1322(a), 1324. *See Williams v. Lee*, 358 U.S. 217, 222 (1959); *Kennerly v. District Court of Montana*, 400 U.S. 423, 427 (1971); *Washington v. Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463, 485-86 n.30 (1979). Third, because Congress understood that a state's assumption of jurisdiction could have

[3] While the form by which the State chooses to manifest its intent to assume jurisdiction over Indian country is not dictated by the federal statute, but a matter of state law, *see Washington v. Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463, 484-93 (1979), the significance that an assumption of jurisdiction has on the interests of both a state and a tribe require some formal act by the state. *See id.* at 486 n.30, 493.

serious implications for tribal sovereignty, Congress also required that a tribe consent to the state's assumption of jurisdiction before such jurisdiction is granted. 25 U.S.C. § 1322(a). Tribal consent is an integral part of this statutory scheme.[4] In addition, under Public Law 280, where all three preconditions are met, the State is still required to apply tribal law and custom, if not inconsistent with the civil law of the State, in determining civil causes of action pursuant to that section. *Id.* at § 1322(c).

Congress very deliberately chose to invoke the requirements of Public Law 280 as amended when Congress enacted the Connecticut Indian Land Claims Settlement Act in 1983. The only part of Public Law 280 that Congress directed not apply—as Congress expressly stated in section 1755—was the "special election" procedures the 1968 Amendments required be used to manifest tribal consent to a state's assumption of jurisdiction.[5] Thus, while § 1755 of the Settlement Act does not condition Connecticut's assumption of jurisdiction on a "special election" by tribal members as provided in 25 U.S.C. § 1326, Congress otherwise quite carefully chose *not* to

[4] "The impetus for the addition of a consent requirement in the 1968 amendments [to Public Law 280] was congressional dissatisfaction with the involuntary extension of state jurisdiction over Indians who did not feel they were ready to accept such jurisdiction, or who felt threatened by it." *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877, 892 (1986) (citing S. Rep. No. 721, 90th Cong., 1st Sess., 32 (1967)).

[5] Section 1326 specifies a procedure by which tribal consent would be manifested, requiring that "the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose." 25 U.S.C. § 1326. Presumably, however, in the era of Self-Determination, Congress found it unnecessary to dictate to the Mashantucket Pequot Tribe the manner by which it could manifest its consent to a state's assumption of jurisdiction, but instead left the Tribe, like the State, *see* Note 3, *supra*, free to determine for itself the appropriate method by which this might be done.

omit all other requirements of Public Law 280, specifically that (a) the State manifest its intent to assume jurisdiction over the Reservation by some formal action, 25 U.S.C. § 1322(a) and (b) that the Tribe consent to the State's assumption of jurisdiction as separately required by 25 U.S.C. § 1322(a). Indeed, given the constraints imposed by the Tenth Amendment of the United States Constitution on Congress' power to compel a state to assume a federal obligation, *see Printz v. United States*, 521 U.S. ——-, 138 L.Ed.2d 914 (1997), we question whether Congress could have constitutionally conferred such jurisdiction on a state without allowing the state, by some subsequent act, to choose whether it would agree to assume the responsibilities and burdens that—as this Court has found—accompany the assumption of such jurisdiction. *See Williams v. Lee*, 358 U.S. 217, 220 (1959); *Kennerly v. District Court of Montana*, 400 U.S. 423, 427 (1971).

Significantly, neither of the two requirements imposed by Public Law 280—a formal State act assuming jurisdiction, or consent by the Tribe—has been satisfied with regard to the Mashantucket Pequot Reservation. First, there is no evidence that Connecticut has manifested its intent to assume jurisdiction over Indians on the Mashantucket Pequot Reservation by any formal action. The State however, apparently recognizes that some such formal action is required to assume jurisdiction over Indian country, as the State—in the context of assuming jurisdiction over *another* reservation in the State (the Mohegan Reservation)—expressly enacted a statute formally assuming jurisdiction. *See* Connecticut Public Act 96-142 effective May 29, 1996, codified at § 47-65b of the General Statutes of Connecticut. That statute recites:

> The state of Connecticut assumes criminal jurisdiction and civil regulatory jurisdiction pursuant to the May 17, 1994 Agreement and the May 17, 1994, Gaming Compact between the state of Connecticut

> and the Mohegan Tribe of Indians of Connecticut and Public Law 103-377.[6]

In stark contrast to this act of the State Legislature, Connecticut has done nothing to formally manifest its intent to assume civil jurisdiction over the Mashantucket Pequot Reservation.

The lack of compliance by the State of Connecticut with the provisions of Public Law 280 for assuming civil jurisdiction over the Mashantucket Pequot Reservation was noted by the federal district court in *Mashantucket Pequot Tribe v. McGuigan*, 626 F. Supp. 245 (D. Conn. 1986). There, in the context of holding that state bingo laws did not apply to the Mashantucket Pequot Tribe's bingo operation, the federal district court noted that:

> There is no claim that Connecticut has formally acted to assume jurisdiction over the land which now constitutes plaintiff's Reservation . . . nor that the tribe has consented to such assumption. . . .

Id. at 247. The court further noted that the Settlement Act placed the Mashantucket Pequot Reservation "on the same footing as Indian land then controlled by . . . the successor to Public Law 83-280," *id.* at 248, but that by eliminating the special election requirement contained in section 1326, Congress "may have created an anomaly by the fact that it does not eliminate the consent requirement of 25 U.S.C. section 1321." *Id.* The court, however, found it unnecessary to resolve the question of tribal consent as it declined to find state jurisdiction to enforce its bingo laws on the Reservation on other grounds. *Id.*

Since Connecticut has never formally acted to assume jurisdiction over the Mashantucket Pequot Reservation,

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[6] Similarly, the Connecticut Supreme Court in *Schaghticoke Indians of Kent, Connecticut, Inc. v. Potter*, 217 Conn. 612, 587 A.2d 139 (1991) concluded that some formal manifestation of the State's intent to assume civil jurisdiction over Indians on a reservation is required by Public Law 280.

there likewise has been no need for the Tribe to formally indicate whether it would consent to the State's assumption of such jurisdiction—as is required by § 1322. And the absence of formal State action assuming jurisdiction over the Mashantucket Pequot Reservation, coupled with the complete lack of Tribal consent to the State's assertion of jurisdiction, bar the State from now claiming it has civil jurisdiction over matters involving Indians on the Reservation.

The Connecticut Supreme Court's decision thus conflicts with established and longstanding precedent of this Court which (1) hold that states lack jurisdiction over Indians on their reservations unless Congress, by a clear and plain statement has consented to such jurisdiction;[7] (2) require strict compliance with federal statutes authorizing a state to assume jurisdiction over Indian country; and (3) require any doubt to be resolved against a state's assumption of jurisdiction and in favor of preserving tribal sovereignty.[8]

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[7] As this Court has stated: "[t]he policy of leaving Indians free from state jurisdiction is deeply rooted in the Nation's history." *Rice v. Olson*, 324 U.S. 786, 789 (1945). "[F]rom the very first days of our Government, the Federal Government had been permitting the Indians largely to govern themselves, free from state interference, ..." *Warren Trading Post v. Arizona Tax Comm.*, 380 U.S. 685, 686-87 (1965). "Congress has also acted consistently upon the assumption that the states have no power to regulate the affairs of Indians on a reservation." *Williams v. Lee*, 358 U.S. 217, 220 (1959). *Accord McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 170-71 (1973); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

[8] *Williams v. Lee*, 358 U.S. 217, 218, 222 (1959); *Kennerly v. District Court of Montana*, 400 U.S. 423 (1971); *Washington v. Confederated Bands of Yakima Indian Nation*, 439 U.S. 463, 484 (1979) ("[A]mbiguities in legislation affecting retained tribal sovereignty are to be construed in favor of the Indians . . ."). *See also Bryan v. Itasca County*, 426 U.S. 373, 392 (1976) ("[I]n construing this 'admittedly ambiguous' statute, we must be guided by that 'eminently sound and vital canon' that 'statutes passed for the

III. THE DECISION OF THE CONNECTICUT SUPREME COURT CONFLICTS WITH THE WELL SETTLED RULE OF FEDERAL LAW THAT COURTS SHOULD ABSTAIN FROM EXERCISING JURISDICTION UNTIL A TRIBAL COURT HAS HAD AN OPPORTUNITY TO EXERCISE ITS JURISDICTION.

This Court's decisions in *Nat'l Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845 (1985) and *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9 (1987) establish a policy of abstention in favor of tribal court jurisdiction in cases where jurisdiction lies in both federal court and tribal court. The teaching of these cases is simple. Where such concurrent jurisdiction is present, civil jurisdiction "presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute." *LaPlante*, 480 U.S. at 18; *see also Nat'l Farmers Union*, 471 U.S. at 855-57. This should be particularly so where the matter at issue is the marital status of a tribal member residing on the Tribe's Reservation. Thus while not a matter of this Court's supervisory authority over the lower federal courts, the abstention doctrine reflects important federal interests in protecting tribal sovereignty and should have equal application here.

This abstention doctrine was born out of a concern that the federal government's longstanding policy of promoting tribal self-government through the development of tribal courts would be frustrated without a policy of deference to tribal courts when jurisdiction lies concurrently with a tribal court and a federal court. *Nat'l Farmers Union*, 471 U.S. at 856; *LaPlante*, 480 U.S. at 15-16. In both cases the Court found that although federal subject matter jurisdiction existed, the government's firmly established policy of promoting Indian self-governance and

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benefit of dependent Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indians.' ") (citations omitted).

self-determination required exhaustion of tribal court remedies before any action on the same subject matter could be maintained in federal court. *Nat'l Farmers Union*, 471 U.S. at 856; *LaPlante*, 480 U.S. at 18. The Court recognized that few if any such cases (especially those involving non-Indians) would be heard by tribal courts without such deference, effectively undermining tribal law-making authority and tribal institutions. In addition to furthering tribal self-governance, the Court found that deferral to tribal courts in these instances would foster the "orderly administration of justice" by avoiding the " 'procedural nightmare' " often alleged when tribal courts share jurisdiction with another court. *Nat'l Farmers Union*, 471 U.S. at 856.

The same policy considerations that underlie the abstention rule in the context of concurrent federal jurisdiction apply with equal, if not greater, force where a state court seeks to assert jurisdiction over a matter within the jurisdiction of the tribal court. The abstention doctrine promotes tribal sovereignty because it protects the tribal courts from the harsh realities of concurrent jurisdiction —that tribal courts will hear relatively few cases within their jurisdiction. That same reality is just as prevalent when jurisdiction lies concurrently between a state court and tribal court. As this Court noted, "[i]f state-court jurisdiction over Indians or activities on Indian lands would interfere with tribal sovereignty and self-government, the state courts are generally divested of jurisdiction as a matter of federal law." *LaPlante*, 480 U.S. at 15. Thus even where states and tribes might share jurisdiction, the promotion of Indian self-government dictates that abstention in favor of tribal courts is required. "The federal policy favoring tribal self-government operates even in areas where state control has not been affirmatively preempted by federal statute." *Id.* at 14. And as this Court has found "[a]djudication of such matters by *any nontribal court* also infringes upon tribal law-making authority, be-

cause tribal courts are best qualified to interpret and apply tribal law." *Id.* at 16 (emphasis added).

Abstention is warranted in this case. There is no dispute that the Mashantucket Pequot Tribal Court has jurisdiction to hear and decide a dissolution of marriage proceeding involving a tribal member residing on the Reservation. App. B at 15a, n. 5. Although asked to dismiss this action to allow the matter to be heard in the Tribal Court, the Connecticut Supreme Court declined to address the exhaustion doctrine. Its failure to do so conflicts with another decision of the State court, in particular *Drumm v. Brown*, No. CV-96-079971, p. 4 (Judicial District of Middlesex at Middletown June 27, 1997) *appeal pending*, where the State court expressly concluded that under the dictates of this Court's decisions in *Nat'l Farmers Union* and *LaPlante*, the Mashantucket Pequot Tribal Court "should have the first opportunity to determine its jurisdiction," and dismissed the State court action.[9]

Moreover, application of the abstention doctrine is all the more compelling given the facts of this case. The only contact that the Connecticut courts claim to have with regard to the litigation is based on the Court's conclusion that a tribal member living on the Reservation is a resident of the State. The non-Indian plaintiff in the Connecticut suit is not a resident of the State of Connecticut—but resides in Rhode Island. Moreover, under Public Law 280, even if the State were found to have civil jurisdiction, the State may be called upon to apply principles of tribal law in resolving questions related to the dissolution of the marriage. *See* 25 U.S.C. § 1322(c). Given the availability of a Tribal forum to do this, no purpose is served by the State's assumption of jurisdiction in these circumstances.

Proper application of this Court's decisions in *Nat'l Farmers Union* and *LaPlante* by state courts is becoming

[9] We are lodging a copy of this opinion with the Clerk of this Court.

increasingly important as more tribal governments—like the Mashantucket Pequot—utilize the self-governance tools provided by Congress to develop tribal court systems.[10] But as the number of tribal courts increase, so do the instances of concurrent jurisdiction with various state courts, and the greater the threat to tribal sovereignty and self-determination posed by an absence of a ruling requiring deference to tribal court jurisdiction.[11] The circumstances of this case illustrate this point. The tribal government here recently established its tribal court system. Without an adequate opportunity to exercise its jurisdiction, its entire system is severely undermined. Federal policy favors the development of tribal courts and recognizes that this can only be achieved by allowing tribal courts the first opportunity to hear a case when jurisdiction is shared. As this Court stated: "[p]romotion of tribal self-government and self-determination require[s] that the Tribal Court have the first opportunity [to exer-

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[10] *See* Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450 *et seq.* (encouraging the development of tribal judicial systems through direct contracting with the federal government).

[11] Unfortunately, state courts have not uniformly applied the rule of abstention. *E.g., Gavle v. Little Six, Inc.*, 555 N.W.2d 284, 292 (Minn. 1996), *petition for cert. filed* (Jan. 29, 1997) (finding that *Nat'l Farmers Union* and *LaPlante* need not be followed by state courts unless an assumption of jurisdiction "infringes" upon tribal sovereignty); *Granite Valley Hotel Ltd Partnership v. Jackpot Junction Bingo & Casino*, 559 N.W.2d 135, 137 (Minn. Ct. App. 1997) (same); *Maxa v. Yakima Petroleum, Inc.*, 924 P.2d 372 (Wash. Ct. App. 1996), *review denied*, 1997 Wash. Lexis 218(1997). *But see Bowen v. Doyle*, 880 F. Supp. 99, 123-26 (W.D.N.Y. 1995) (applying the tribal court exhaustion doctrine to state courts); *Nenana Fuel Co., Inc. v. Native Village of Venetie*, 834 P.2d 1229, 1233-35 (Alaska 1992) (recognizing the applicability of the abstention doctrine to state courts when jurisdiction is shared with tribal courts); *Matsch v. Prairie Island Indian Community*, 567 N.W.2d 276 (Minn. Ct. App.), *review denied*, 1997 Minn. Lexis 717 (1997) (dismissing state court action in favor of a concurrent tribal court action under *Nat'l Farmers Union* and *LaPlante*); *Klammer v. Lower Sioux Convenience Store*, 535 N.W.2d 379 (Minn. Ct. App. 1995) (same).

cise jurisdiction]." *LaPlante*, 480 U.S. at 15-16 (internal quotation omitted).

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully prays that this Court grant the petition and reverse the decision below.

Respectfully submitted,

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Dated: February 17, 1998

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APPENDIX A

SUPREME COURT OF CONNECTICUT

(SC 15701)

MARILYN CHARLES

v.

OWEN CHARLES

September 30, 1997, Argued
November 18, 1997, officially released

JUDGES: Callahan, C. J., and Borden, Berdon, Katz, Palmer and McDonald, Js.[1]

OPINION

CALLAHAN, C.J. The sole issue on appeal is whether the Superior Court has subject matter jurisdiction, pursuant to General Statutes § 46b-44(c)(1),[2] over a dis-

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[1] Subsequent to oral argument in this appeal, Justice Norcott, although originally assigned to hear the case, disqualified himself. The parties have agreed to have the appeal decided by the remaining six justices.

[2] General Statutes § 46b-44 provides in relevant part: "(c) A decree dissolving a marriage or granting a legal separation may be entered if: (1) One of the parties to the marriage has been a resident of this state for at least the twelve months next preceding the date of the filing of the complaint or next preceding the date of the decree . . . ." (Emphasis added.)

solution of marriage action brought by an individual who is not a resident of Connecticut against a member of the Mashantucket Pequot Indian Tribe (tribe) who resides on the tribe's reservation in Ledyard. We answer this question in the affirmative.

The relevant facts and procedural history are as follows. On November 1, 1995, the plaintiff, Marilyn Charles, a nonIndian resident of Rhode Island, filed this action for dissolution of marriage in the Superior Court for the judicial district of New London. The defendant, Owen Charles, is a member of the Mashantucket Pequot Indian Tribe, who resides on the tribe's reservation in Ledyard. The defendant was a resident of the reservation for at least twelve months immediately prior to the initiation of the plaintiff's action. *See* General Statutes § 46b-44(c)(1).

On May 7, 1997, the trial court, acting upon the defendant's motion to dismiss, determined that the defendant was not a resident of Connecticut for purposes of § 46b-44(c)(1). The court concluded, consequently, that it lacked subject matter jurisdiction over the plaintiff's action and dismissed her complaint. The trial court reasoned that, because the defendant resided on the reservation, he was not a Connecticut resident and, therefore, the court was without jurisdiction.[3] The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to Practice Book § 4023 and General Statutes § 51-199(c). We conclude that the trial court has subject

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[3] In its memorandum of decision, the trial court stated that "Rhode Island, by virtue of the plaintiff's residence, has an interest in the outcome of the divorce proceeding. [The tribe] by virtue of the defendant's residency and tribal membership, has an interest in the outcome of the proceeding. This court fails to find a corresponding interest for the state of Connecticut. For the foregoing reasons, the court concludes that a Mashantucket tribal member residing on the reservation does not satisfy the residency requirement of § 46b-44."

matter jurisdiction over the dissolution action, and we reverse the judgment of the trial court.

An action for dissolution of a marriage "obviously is a civil action." *Smith v. Smith,* 150 Conn. 15, 19, 183 A.2d 848 (1962). The Superior Court has exclusive jurisdiction of all complaints seeking a dissolution of marriage. General Statutes § 46b-42. Section 46b-44 establishes a residency requirement, satisfaction of which is essential to confer on the court subject matter jurisdiction over a dissolution action.[4] Because the plaintiff in this case resides in Rhode Island, the statute can be satisfied only if the defendant meets the requirements of § 46b-44(c)(1), which grants subject matter jurisdiction if "one of the parties to the marriage has been a resident of this state for at least the twelve months next preceding the date of the filing of the complaint . . . ." *See* footnote 2. The threshold question before us, therefore, is whether the defendant, a tribal member residing on the reservation,[5] is subject to the jurisdiction of the Superior Court of the state of Connecticut in this civil action for the dissolution of marriage.

The defendant argues that the Superior Court lacks subject matter jurisdiction because the tribe has not consented to the jurisdiction of the state in civil matters. The fallibility of this argument lies in its assumption that the tribe's consent is necessary. We previously have addressed the question of state jurisdiction over Indian residents of the Mashantucket Pequot Reservation in the criminal context. *State v. Spears,* 234 Conn. 78, 662 A.2d 80, *cert. denied,* 516 U.S. 1009, 116 S. Ct. 565, 133 L. Ed. 2d 490 (1995). In Spears, after a lengthy analysis of the relevant statutes, we held that tribal consent to the state's criminal jurisdiction was not required. *Id.,* 96. The

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[4] *See* footnote 2 of this opinion.

[5] Connecticut formally recognizes members of the Mashantucket Pequot Tribe as "Indians" and recognizes their reservation in Ledyard. General Statutes § 47-63.

rationale employed in Spears is equally applicable to the question of civil jurisdiction in this case. Accordingly, we conclude that tribal consent is not required to confer state jurisdiction over this civil action against a member of the Mashantucket Pequot Tribe who resides on the tribe's reservation in Ledyard.

To answer the question presented, we must construe those federal statutes that govern state jurisdiction over Indian country [6] generally and the territory of the Mashantucket Pequot Tribe in particular. Our analysis of the statutes is guided by well established principles of statutory construction. "Statutory construction is a question of law and therefore our review is plenary." *Davis v. Norwich,* 232 Conn. 311, 317, 654 A.2d 1221 (1995). "We . . . must effectuate the expressed Congressional intent. . . . Our fundamental objective is to ascertain and give effect to the apparent intent of the legislature . . . . Ordinarily, if the language of a statute is plain and unambiguous, we need look no further than the words themselves because we assume that the language expresses the legislature's intent. . . . In seeking to discern that intent, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." (Citations omitted; internal quotation marks omitted.) *State v. Spears, supra,* 234 Conn. 85-86.

We begin with an analysis of the text of the federal statutes that govern Indian affairs generally. The United States has the authority to regulate Indian affairs pursuant to the Indian commerce clause of the United States constitution. U.S. Const., art. I, § 8, cl. 3; *see White Mountain*

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[6] "Indian country" is defined as "all land within the limits of any Indian reservation under the jurisdiction of the United States Government . . . ." 18 U.S.C. § 1151(a).

Apache Tribe v. Bracker, 448 U.S. 136, 100 S. Ct. 2578, 65 L. Ed. 2d 665 (1980). Congress addressed the issue of state jurisdiction over tribal land in 1953 when it enacted Public Law 83-280.[7] That legislation granted five states civil jurisdiction over tribal lands within their boundaries, increasing that number to six the following year.[8] The 1953 act provided an option for other states to assume civil jurisdiction over tribal lands if their state legislatures affirmatively authorized such assumption.[9] In 1968, Congress repealed Public Law 83-280 and replaced it with Title IV of the Indian Civil Rights Act of April 11, 1968, 82 Stat. 78, which is codified at 25 U.S.C. §§ 1321 through 1326. Title IV provides in §§ 1321 and 1322 (§§ 401 and 402 of Title IV), respectively, that the tribe must consent to the assumption by the states of civil and criminal jurisdiction.[10]

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[7] Public Law 83-280 appears at 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (1953).

[8] The original five states were California, Minnesota, Nebraska, Oregon and Wisconsin. Alaska was added later. At that time, Connecticut had no federally recognized tribal lands.

[9] Section 7 of Public Law 83-280 authorizes "any other State not having jurisdiction with respect to . . . civil causes of action . . . as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative action, obligate and bind the State to assumption thereof." Act of Aug. 15, 1953, c. 505, § 7, 67 Stat. 590.

[10] Title 25 of the United States Code, § 1322(a) provides: "The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have

In 1971, the United States Supreme Court concluded that the sole method of tribal consent to the assumption of both criminal and civil jurisdiction under Title IV was the method established in § 1326. *Kennerly v. District Court of Montana*, 400 U.S. 423, 429, 91 S. Ct. 480, 27 L. Ed. 2d 507 (1971). That section provides that "state jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose." 25 U.S.C. § 1326 (§ 406 of Title IV). If that statute were the last word on state jurisdiction over Indian country, the defendant's claim that the court lacked jurisdiction would be corrrect because the tribe has not accepted state jurisdiction "by a majority vote of the adult Indians voting at a special election held for that purpose."

In 1983, however, Congress enacted the Mashantucket Pequot Indian Claims Settlement Act[11] (Settlement Act) to effectuate a land dispute settlement between the tribe and the state of Connecticut. Congress provided in § 6 of the Settlement Act; 25 U.S.C. § 1755; that "notwithstanding the provision relating to a special election in section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326), the reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in [T]itle IV of such Act [25 U.S.C.

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the same force and effect within such Indian country or part thereof as they have elsewhere within the State."

Title 25 of the United States Code, § 1321 provides for criminal jurisdiction in virtually identical terms. *See* footnote 13 of this opinion.

[11] The Mashantucket Pequot Indian Claims Settlement Act of 1983, Public Law 98-134, § 2, October 18, 1983, 97 Stat. 851, is codified at 25 U.S.C. §§ 1751 through 1760.

1321 *et seq.*]." (Emphasis added.) That provision has been interpreted by this court as conferring jurisdiction on the state without the requirement of tribal consent. *State v. Spears, supra,* 234 Conn. 84-94. Spears involved a determination of the criminal jurisdiction of the state over members of the tribe. The statutory analysis and result with respect to civil jurisdiction are, however, substantially the same.[12]

Relying on precedent of the United States Supreme Court, we concluded in Spears that the only mechanism for establishing the requisite tribal consent to criminal jurisdiction in § 1321 would have been through the special election provision of § 1326 (§ 406 of Title IV of the Indian Civil Rights Act). *State v. Spears, supra,* 234 Conn. 90, quoting *Kennerly v. District Court of Montana, supra,* 400 U.S. 429. Cognizant of the fact that the United States

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[12] The defendant's reliance on *Mashantucket Pequot Tribe v. McGuigan,* 626 F. Supp. 245 (D. Conn. 1986) is misplaced. That decision dealt with the applicability to the tribe of Connecticut's bingo laws, deemed to be a regulatory scheme. In dicta, without analysis, the United States District Court in McGuigan pondered whether the elimination by § 1755 of the special election provision of § 1326 "may have created an anomaly by the fact that it does not eliminate the consent requirement of 25 U.S.C. § 1321. It is not necessary, however, to resolve that question . . . ." *Id.,* 248. This court has had difficulty clearly articulating our interpretation of that decision. In *Schaghticoke Indians of Kent, Connecticut, Inc. v. Potter,* 217 Conn. 612, 615 n.3, 587 A.2d 139 (1991), we indicated that McGuigan held that Connecticut had acquired criminal but not civil jurisdiction. We later clarified our interpretation of that case as leaving the question of criminal jurisdiction open because it dealt only with the bingo rules, which are " 'civil/regulatory.' " *State v. Spears, supra,* 234 Conn. 84 n.4. We now make clear that the dicta in McGuigan has no relevance to the analysis of whether § 1755 granted civil and criminal jurisdiction to the state of Connecticut while eliminating any tribal consent requirement. The United States District Court expressly stated that it did not reach that issue. In Spears, however, this court did resolve the unanswered question of the effect of § 1755 on the consent requirement of § 1326.

Supreme Court had interpreted § 1326 as the only mechanism for tribal consent, Congress eliminated that mechanism when it enacted § 1755 (§ 6 of the Settlement Act). "It follows, then, that the nullification by § 1755 of the special election requirement, the sole means by which Indian tribes may consent to state jurisdiction [under Title IV], accompanied by an express grant of jurisdiction to the state, effectively nullifies the tribal consent requirement in § 1321 [and, likewise § 1322]." [13] *State v. Spears, supra,* 234 Conn. 90.

The legislature is presumed to know the judicial interpretation placed upon a statute. *State v. Crowell,* 228 Conn. 393, 401, 636 A.2d 804 (1994); *Cappellino v. Cheshire,* 226 Conn. 569, 576, 628 A.2d 595 (1993). It is further presumed that when the legislature subsequently acts with respect to a statute, it does so with full awareness of relevant judicial interpretations. *Rodriguez v. United States,* 480 U.S. 522, 525, 107 S. Ct. 1391, 94 L. Ed. 2d 533 (1987). It is essential that statutes be read as constituting one harmonious whole. *Digital Equipment Corp. v. Desktop Direct, Inc.,* 511 U.S. 863,

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[13] The consent language of § 1322 is identical in all material respects to § 1321. The differences in the two statutes are highlighted immediately below.

Title 25 of the United States Code, § 1321(a) provides in relevant part: "The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which would be affected by such assumption . . . ." (Emphasis added.)

Title 25 of the United States Code § 1322(a) provides in relevant part: "The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption . . . ." (Emphasis added.)

878-79, 114 S. Ct. 1992, 128 L. Ed. 2d 842 (1994). "The only way to harmonize [§ 1321 or § 1322 and § 1326] with each other and with § 1755 is to conclude that the abrogation of the only method of consent abrogated the necessity for consent." *State v. Spears, supra,* 234 Conn. 91.

The defendant attempts to distinguish our decision in Spears on the ground that in Spears we addressed only criminal jurisdiction, and that civil jurisdiction appears in a separate section of Title IV of the Indian Civil Rights Act. This argument is without merit. Although the holding in Spears regarding criminal jurisdiction may not control this civil action, its underlying rationale is equally applicable to this case. Section 1755 does not provide that the tribe is subject to state jurisdiction only to the maximum extent provided in § 1321. Rather, § 1755 provides: "To the maximum extent provided in Title IV of such Act." (Emphasis added.) Title IV of "such Act" refers to the Indian Civil Rights Act, which includes §§ 1321 through 1326. Title IV encompasses both the criminal jurisdiction provision of § 1321 and the civil jurisdiction provision of § 1322. Therefore, "jurisdiction to the maximum extent provided in Title IV" (emphasis added) includes both criminal and civil jurisdiction.[14] Section 1755, which is § 6 of the Settlement Act, therefore, eliminated the consent requirement with respect to civil jurisdiction contained within Title IV as well as the consent requirement with respect to criminal jurisdiction. The plain language of these interlocking statutes permits no other interpretation.

The legislative history of the Settlement Act provides further support for the proposition that Congress intended to eliminate the consent requirement. The reports of both

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[14] Section 1326, which was supplanted by § 1755 with respect to the Mashantucket Pequot Tribe, specifically encompassed consent to jurisdiction over "criminal offenses or civil causes of action, or . . . both . . . ."

the Senate and House of Representatives indicate that "section 6 [§ 1755] provides that the reservation . . . is subject to the full extent of State jurisdiction . . . as defined in Title IV of the Act of April 11, 1968, the Indian Civil Rights Act. The Tribe's reservation has this status notwithstanding section 406 of the Indian Civil Rights Act [§ 1326] which requires a majority vote of the enrolled members of an Indian tribe before a state may assume jurisdiction over that tribe." (Emphasis added.) S. Rep. No. 222, 98th Cong., 1st Sess., 16 (1983); H.R. Rep. No. 43, 98th Cong., 1st Sess., 10 (1983). The "full extent of State jurisdiction . . . as defined in Title IV" includes both criminal and civil jurisdiction. Moreover, the use of the present tense, "has this status," in the Senate report clearly indicates that the intent of Congress was that the grant of jurisdiction to Connecticut be accomplished by enactment of the statute. If consent were still required, the statement would have been cast in the future tense, denoting that the tribe will have this status after it consents. *See States v. Spears, supra,* 234 Conn. 94.

As with criminal jurisdiction, the plain language and legislative history of § 6 of the Settlement Act, 25 U.S.C. § 1755; evince a clear intent to eliminate the provision in § 1326 requiring tribal consent as a prerequisite to conferring civil jurisdiction on the state pursuant to § 1322. Accordingly, Connecticut has jurisdiction "over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within [Connecticut]" pursuant to 25 U.S.C. § 1322.[15] Once the state acquires civil jurisdiction, it has "such measure of jurisdiction over any or all such civil causes of

[15] Viewed another way, the Settlement Act itself is tribal consent. That act was enacted as a compromise settlement among the tribe, the state of Connecticut and the federal government. *See Mashantucket Pequot Tribe v. McGuigan, supra,* 626 F. Supp. 247. In agreeing to the Settlement Act's provisions, which enabled settlement of the tribe's land claims in Ledyard, the tribe relinquished its right to require its consent to state jurisdiction.

action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State." (Emphasis added.) 25 U.S.C. § 1322.

Because Congress, in adopting the Settlement Act, conferred upon the state of Connecticut the civil jurisdiction provided in § 1322, it necessarily follows that the defendant is subject to the provisions of § 46b-44 "to the same extent" as if he were a resident of the state.[16] The civil laws of the state, including § 46b-44, have the same force and effect on the reservation as they have elsewhere in Connecticut. The defendant may not, therefore, avail himself of the argument that he is not a Connecticut resident in order to evade the jurisdiction of the Connecticut courts over this action. The Superior Court has jurisdiction over this action pursuant to 25 U.S.C. §§ 1755 and 1322 to the same extent it would have if the defendant were any other resident of Connecticut. The defendant, consequently, must be treated as a resident of Connecticut for purposes of § 46b-44(c)(1) notwithstanding his tribal membership and residency on the tribal reservation. Therefore, the Superior Court has subject matter jurisdiction over this dissolution action.

The judgment is reversed and the case is remanded for further proceedings according to law.

In this opinion the other justices concurred.

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[16] We note that we do not here decide whether an Indian resident of Indian country is a resident of the state in which the reservation is located for all purposes. We hold only that Connecticut has jurisdiction pursuant to 25 U.S.C. §§ 1322 and 1755 and so has jurisdiction over this dissolution action to the same extent that it would have if the defendant were not a resident of the reservation residing within the boundaries of the state of Connecticut.

APPENDIX B

SUPERIOR COURT OF CONNECTICUT,
JUDICIAL DISTRICT OF NEW LONDON,
AT NEW LONDON

536362S

MARILYN CHARLES

v.

OWEN CHARLES

May 7, 1997, Decided
May 7, 1997, Filed

Judges: Kevin E. Booth, J.

Opinion by: Kevin E. Booth.

OPINION: MEMORANDUM OF DECISION ON THE DEFENDANT'S MOTION TO DISMISS DATED MARCH 21, 1997

The defendant's motion to dismiss this action for lack of subject matter jurisdiction is granted on the ground that a Mashantucket tribal member living on the reservation is not a resident of Connecticut for purposes of General Statutes 46b-44.

I. Factual and Procedural History

On November 1, 1995, the plaintiff, Marilyn Charles (hereinafter the "plaintiff") filed a complaint for dissolu-

tion of marriage against Owen Charles (hereinafter the "defendant") in the judicial district of New London at New London.[1] The plaintiff's complaint alleges 1) that the plaintiff is a resident of Rhode Island, and that the defendant has continuously resided in Connecticut "for at least 12 months next preceding the date of the filing of this Complaint," 2) that the marriage between the two parties has broken down irretrievably, and 3) that the marriage has produced one minor child. The plaintiff's complaint requests various relief including alimony, temporary and permanent, custody of the minor child, child support, temporary and permanent, counsel fees, and equitable distribution of property.[2]

On November 22, 1995, the defendant filed an answer and cross-complaint. The defendant's cross-complaint alleges, inter alia, the following facts: 1) the parties were married in New Haven, Connecticut, on December 18, 1983; 2) the defendant is "a resident and member of the Mashantucket Pequot Tribal Nation, Mashantucket, Connecticut;" 3) the marriage has broken down irretrievably with no hope of reconciliation; and 4) the marriage has

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[1] Service of process was rendered in hand to the defendant, off the reservation, at the Norwich Inn & Spa. Norwich, Connecticut, the defendant's place of employment, on October 25, 1995.

[2] Subsequent to the complaint, the court made a series of pendente lite orders as to child support and alimony. On November 7, 1995, the court, Teller, J., ordered the defendant to pay alimony in the amount of fifty (50) dollars. On November 11, 1995, the court, Teller J., awarded joint legal and physical custody of the minor child, Joshua Andrew Charles, to both the plaintiff and the defendant, and ordered the defendant to pay child suport in the amount of four hundred and ninety-six dollars a week. On November 27, 1995, the court, Teller J., ordered the defendant to maintain health insurance on behalf of the plaintiff and minor child. On January 16, 1997, the court accepted the parties' stipulated agreement thereby determining the visitation schedule for the minor child vis-a-vis the plaintiff and the defendant and ordering the execution of a wage garnishment for both alimony and child support ordered previously by the court.

produced one minor child. The defendant requests that this court dissolve the marriage, grant joint custody, bestow primary residence of the minor child in the Mashantucket Pequot Tribal Nation, and render a fair and equitable division of the personal property.

On November 23, 1996, the defendant filed a motion to dismiss the complaint on the ground that the court lacked jurisdiction over the Person of the defendant and over the minor child.

On March 25, 1996, the court, Teller, J., heard oral argument on the defendant's motion to dismiss for lack of personal jurisdiction, at the end of which the court denied the defendant's motion to dismiss asserting that "under the circumstances of this case, the Court does have jurisdiction and is willing to exercise that jurisdiction, and therefore accepts such jurisdiction to make custodial determinations in this case. The motion to dismiss is therefore denied in all respects as stated." [3] [4]

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[3] During the course of the hearing, the court appears to have made a determination as to the court's jurisdiction over the person of the defendant

> The Court: What do you say, Attorney Gaccione?
>
> Mr. Gaccione: Are you asking about specifically the child? There are two issues, the motion to dismiss personal jurisdiction over the defendant and then the child?
>
> The Court: Forget the personal jurisdiction, he has been served, he has been in court. He has filed an appearance. He hasn't done anything within the first thirty days. I am just concerned about whether this Court has custodial determination jurisdiction under the UCCJA. The rest of the motion to dismiss has no merit whatsoever.

The court further addresses jurisdiction as follows:

> The Court: Why are you doing this? This would require an action to be brought in the state of Rhode Island if I dismiss the case.
>
> Mr. Chamberlain: We believe it requires an action to be brought in the tribal nation . . . We feel it is important to have it litigated through the court. We feel that all the relatives are

On October 7, 1996, the defendant filed a dissolution of marriage action with the Mashantucket Pequot Tribal Court (hereinafter the "tribal court").[5] In conjunction with that action, the defendant also filed motions with the tribal court for custody and support of the minor child and payments of support from the plaintiff.

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not Connecticut residents but tribal residents and members. I did accept your ruling on [the defendant] for jurisdiction; he is not allowed to confer jurisdiction to this court by any sort of omission in the pleadings or whatnot. I think there is case law that would direct the Court, whether there actually was actual jurisdiction.

The Court: Wasn't he served in this case, Mr. Chamberlain, didn't you file a general appearance in this case and did you not file a motion to dismiss until after the thirty days had gone by?

Mr. Chamberlain: That is correct.

The Court: So that is it. It is over.

Mr. Chamberlain: Potentially, although as long as this Court finds jurisdiction, that is fine. He is not agreeing to jurisdiction.

The Court: The subject matter jurisdiction is a result of the divorce action which the Court has subject matter jurisdiction of. There is in personam jurisdiction of Mr. Charles because he appears in this case. End of story.

[4] The defendant subsequently appealed the court's ruling denying the motion to dismiss. On September 18, 1996, the Appellate Court dismissed the defendant's appeal for lack of a final judgment. Although there are references which could be read to refer to subject matter jurisdiction, the motion before Judge Teller and most of the argument appears to have concerned personal jurisdiction. Certainly, the question of the defendant's residency in Connecticut was not litigated before Judge Teller.

[5] Mashantucket Pequot Tribal Council resolution # 102395-03 of 04, entitled "Enactment of Family Relations Ordinance," was adopted on October 23, 1995, and gave the tribal courts jurisdiction over, among other matters, divorce actions where at least one party to the action is a tribal member. This action was commenced on October 25, 1995, two days after the ordinance apparently went into effect.

The plaintiff has filed an appearance in that action and has also filed a motion to stay proceedings dated November 1, 1996.

On October 29, 1996, the defendant, at the direction of new counsel, filed a motion to dismiss and/or stay proceedings on the ground that the court lacked jurisdiction and, alternatively, that the preceding should be stayed pending resolution of the tribal court action.

On March 10, 1997, this court denied the defendant's motion to stay the proceedings and ordered stricken the October 29, 1996 motion to dismiss, and ordered that the defendant file a new motion to dismiss.[6]

On March 24, 1997, the defendant filed a new motion to dismiss for lack of subject matter jurisdiction in compliance with the court's order dated March 10, 1997. On March 26, 1997, the plaintiff filed a memorandum in opposition to the defendant's motion to dismiss. On March 27, 1997, the court, Booth, J., heard oral argument on the defendant's motion to dismiss.[7]

II. Motion to Dismiss, Legal Standard

"A motion to dismiss . . . properly attacks the jurisdiction of the court . . ." *Gurliacci v. Mayer,* 218 Conn. 531, 544, 590 A.2d 914 (1991). "The motion to dismiss shall also be used to assert . . . lack of jurisdiction over the subject matter . . ." (Internal quotation marks omitted.) *Sadloski v. Town of Manchester,* 235 Conn. 637, 645 n. 13, 668 A.2d 1314 (1995). "In deciding a motion to dismiss, [the trial court] must consider the allegations of the complaint in their most favorable light." (Internal quotation marks omitted.) *Savage v. Aronson,* 214 Conn. 256, 264, 571 A.2d 696 (1990). However, "[a] ruling on a motion to dismiss is neither a ruling on

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[6] At the March 10, 1997 hearing, the defendant was represented by yet again different counsel. This court struck the motion to dismiss and ordered a new motion to clarify that the argument had now clearly turned from personal to subject matter jurisdiction.

[7] Counsel for both the plaintiff and the defendant were present.

the merits of the action . . . nor a test of whether the complaint states a cause of action . . . [Rather,] motions to dismiss are granted solely on jurisdictional grounds." (Citations omitted.) *Discover Leasing, Inc. v. Murphy,* 33 Conn. App. 303, 306-07, 635 A.2d 843 (1993).

III. Jurisdiction over Dissolution Proceedings

It is a familiar principle that a court which exercises ". . . statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation." (Citations omitted; internal quotation marks omitted.) *Figueroa v. C and S Ball Bearing,* 237 Conn. 1, 4, 675 A.2d 845 (1996). Whenever the absence of jurisdiction is brought to the notice of the court or tribunal, cognizance of it must be taken and the matter passed upon before it can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction. (Citations omitted; internal quotation marks omitted.) *Baldwin Piano and Organ Co. v. Blake,* 186 Conn. 295, 297, 441 A.2d 183 (1982).

General Statutes 46b-1 provides in pertinent part that: "matters within the jurisdiction of the Superior Court deemed to be family relations matters shall be matters affecting or involving . . . dissolution of marriage, contested and uncontested . . ." General Statute 46b-44(a) provides in pertinent part:

> "[a] complaint for dissolution of a marriage or for legal separation may be filed at any time after either party has established residence in this state." [Emphasis added.] Furthermore, 46b-44(c) provides that "[a] decree dissolving a marriage or granting a legal separation may be entered if: (1) one of the parties to the marriage has been a resident of this state for at least the twelve months next preceding the date of

the filing of the complaint or next preceding the date of the decree . . ." [Emphasis added.]

IV. Discussion

It is uncontested that the parties resided in Florida before their separation. The plaintiff wife now resides in Rhode Island. Therefore, the jurisdictional requirement of residing in this state must be met, if at all, by the defendant husband. Nothing in this opinion is intended to address the issue which would have been presented if the plaintiff wife were a resident of Connecticut.

The defendant argues that this court should grant his motion to dismiss because, as a tribal member and resident of the Mashantucket Pequot Indian Reservation, the defendant is not a resident of the state of Connecticut for the purposes of General Statutes 46b-44. If neither party is a resident, this court lacks subject matter jurisdiction. *Williams v. North Carolina,* 325 U.S. 226, 229-30, 89 L. Ed. 1577, 65 S. Ct. 1092 (1946).

The plaintiff argues that the Superior Court has both subject matter and personal jurisdiction over the defendant, notwithstanding the defendant's residence on the reservation, and that Connecticut has civil jurisdiction over Indians and Indian lands within its boundaries on matters not affecting tribal sovereignty or tribal affairs.

In view of the plaintiff's residence in Rhode Island, whether the court can exercise subject matter jurisdiction in this matter is dependent on whether reservation Indians are residents of the state of Connecticut for purposes of 46b-44. Such an inquiry necessarily requires an analysis of federal law with regard to the jurisdictional relationship between the Indian tribe and the state.

A. Federal Law As To State Jurisdiction Over Tribal Members Living On The Reservation

While the primacy of federal jurisdiction in Indian affairs has never been in doubt, *see Worcester v. Georgia,*

31 U.S. 515 (6 Pet. 515), 8 L. Ed. 483 (1832); and *Williams v. Lee,* 358 U.S. 217, 219, 3 L. Ed. 2d 251, 79 S. Ct. 269 (1959), the jurisdictional relationship between the several states and the various Indian tribes has been far less clear. "Essentially, absent governing Acts of Congress, the question has always been whether state action infringes on the right of reservation Indians to make their own laws and be ruled by them." *Williams v. Lee, supra,* 358 U.S. 220.

The United States Supreme Court has held that "the assertion of state authority over tribal reservations remains subject to two independent but related barriers . . . First, a particular exercise of state authority may be foreclosed because it would undermine the right of reservation Indians to make their own laws and be ruled by them . . . Second, state authority may be preempted by incompatible federal law." [8] (Citations omitted; internal quotation marks omitted.) *Three Affiliated Tribes v. Wold Engineering,* 467 U.S. 138, 147, 81 L. Ed. 2d 113, 104 S. Ct. 2267 (1984); *see also Schaghticoke Indians of Kent, Conn., Inc. v. Potter,* 217 Conn. 612, 626-27, 587 A.2d 139 (1991).

In those cases where federal law has not preempted state law regarding Indians and Indian country, the state must determine whether the exercise of jurisdiction over matters concerning reservation Indians would "infringe on

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[8] "The two barriers are independent because either, stand alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation or by tribal members. They are related, however, in two important ways. The right of tribal self-government is ultimately dependent on and subject to the broad power of Congress. Even so, traditional notions of Indian self-government are so deeply ingrained in our jurisprudence that they have provided an important 'backdrop,' against which vague and ambiguous federal enactments must always be measured." *Ramah Navajo School Bd. v. Bureau of Revenue,* 458 U.S. 832, 837, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

the right of reservation Indians to make their own laws and be ruled by them." *Williams v. Lee, supra,* 358 U.S. 220; *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 141-43, 65 L. Ed. 2d 665, 100 S. Ct. 2578 (1980).

In determining whether jurisdiction infringes on the rights of reservations, a number of western states have developed a particularized inquiry meant to take into consideration the substantial federal interest in tribal self-government. This inquiry is in three parts: 1) whether the parties involved are Indians or non-Indians; 2) whether the cause of action arose within the Indian reservation; and 3) the nature of the interest to be protected. *Chino v. Chino,* 90 N.M. 203, 561 P.2d 476, 479 (N.M. 1977); *Vega v. Medina,* 549 N.W.2d 507, 509-10 (Iowa 1996); *Jackson County Child Support Enforcement Agency v. Swayney,* 319 N.C. 52, 352 S.E.2d 413 (N.C. 1987), *cert. denied,* 484 U.S. 826 (1987); and *Anderson v. Beaulieu,* 555 N.W.2d 537 (Minn. App. 1996).

B. Application

In applying the above-mentioned analytical framework, the court notes that the Mashantucket Pequot tribe is a tribe officially recognized by the federal government and the state of Connecticut. 25 U.S.C.A. 1758; 47-59a of the Connecticut General Statutes, and that the Mashantucket Pequot reservation is Indian land for purposes of federal and state law. 25 U.S.C.A. 1755; *see also State v. Spears,* 234 Conn. 78, 85 n.6, 662 A.2d 80 (1995). This court can find no authority asserting that the state of Connecticut has assumed general civil jurisdiction over the Mashantucket Pequot reservation. *See Mashantucket Pequot Tribe v. McGuigan,* 626 F. Supp. 245, 249 (D. Conn. 1986) (stating that Connecticut had acquired criminal but not civil jurisdiction over the Mashantucket Pequot reservation). Finally, this court has found no federal law specifically preempting state civil jurisdiction over reservation Indians in actions for dissolution of marriage.

In *LaBow v. LaBow*, 171 Conn. 433, 370 A.2d 990 (1976), the Connecticut Supreme Court has stated that "for the purposes of filing a complaint for dissolution of marriage or for the granting of alimony or support pendente lite, residence of one party, without a showing of domicile, is sufficient to give the court subject matter jurisdiction under [46b-44].[9] *LaBow v. LaBow, supra*, 171 Conn. 438. However, for the court to have jurisdiction to grant a divorce decree, the statute requires that there be "domicile plus substantially continuous residence in Connecticut by one of the parties for the twelve months next prior to either the filing of the complaint or the granting of the decree. Those connections, between either spouse and the state are sufficient to entitle the decree to full faith and credit."[10] *LaBow v. LaBow, supra*, 171 Conn. 437. Thus, in order for this court to assume jurisdiction over this action one of the parties, the reservation Indian husband, must meet the residency requirement.

Because this court cannot find any Connecticut law addressing the question of whether a reservation Indian is a resident of the state of Connecticut for purposes of 46b-44, it is necessary to examine the law of other states.

In *Wells v. Wells*, 451 N.W.2d 402 (S.D. 1990), the South Dakota Supreme Court addressed the subject mat-

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[9] "Subsequent to LaBow, General Statutes (Rev. to 1977) 46-35 was amended and transferred to General Statutes 46b-44 by Public Acts 1978, No. 78-230, 20. The amendment, however, was merely a technical revision and was not intended to effect a change in the substance of the law." *Sauter v. Sauter*, 4 Conn. App. 581, 584, 495 A.2d 1116 (1985), citing Hearings before Joint Standing Committee on the Judiciary, Pt. 4, 1978 Sess., pp. 1558-59.

[10] The court further elaborated the effect and implication of the residency requirement for purposes of granting a divorce decree: "The requirement of domicile in an action for dissolution of marriage partakes both of personal and subject matter jurisdiction; when the requirement is met by one of the parties, the state's nexus with the marriage is sufficient to entitle its judgment on the marriage to full faith and credit even without in-state service on the defendant." *LaBow v. LaBow, supra* 171 Conn. 437.

ter jurisdictional requirement of domicile in a divorce action as it applied to an Indian plaintiff living off the reservation and an Indian defendant living on the reservation. In asserting that the State had jurisdiction, the Court first observed that the United States Supreme Court, in *Williams v. State of North Carolina*, 325 U.S. 226, 29-30, 89 L. Ed. 1577, 65 S. Ct. 1092 (1946), had established that "the domicile of one spouse within a State gives power to that State . . . to dissolve a marriage wheresoever contracted." [11] *Id.* 404. Aware that Indian/state relations is governed by the presence or absence of federal law, the South Dakota Court next applied the Lee infringement test. In finding that the State's assertion of jurisdiction over the action did not infringe on Indian self-government, the South Dakota court stated that "when an Indian leaves the reservation and establishes a new domicile, a situation significantly different from [Williams v.] Lee arises." [12] *Id.* 405.

In reaching its conclusion, the Court first hypothesized that if it were faced with a dissolution proceeding in which all the parties were Indians residing on the reservation, a South Dakota Court would clearly lack subject matter jurisdiction to hear the matter. *Id.* 406. Second, the court observed that even if one of the parties were merely off the reservation in the state of South Dakota that the state court would not necessarily have jurisdiction over an Indian party. *Id.* 405. However, the court found that where one of the parties moves off the reservation and establishes domicile "the tribal sovereignty that the

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[11] In that case, the defendant had contended that the state did not have jurisdiction over the marriage because both parties were registered members of the Crow Creek tribe. *Id.* 404.

[12] *Williams v. Lee, supra*, involved an action brought by a non-Indian against an Indian in state court over events occurring on the reservation. The United States Supreme Court held that the exercise of state jurisdiction in that case would undermine the authority of the tribal courts over reservation affairs and would infringe on the rights of the Indians to govern themselves.

court in Lee sought to protect is no longer threatened." *Id.* The Court concluded that "once Dolly left the reservation and took up residence in Rapid City, the state acquired an interest in the marriage of Dolly and William, and their divorce can no longer be characterized as a "reservation matter." *Id.*

In *Flammond v. Flammond*, 190 Mont. 350, 621 P.2d 471 (Mont. 1980), the Montana Supreme Court also analyzed the issue of state subject matter jurisdiction over reservation Indians in a domestic relations dispute. In Flammond, the Montana court held that the district court lacked subject matter jurisdiction in an action for child support brought by an out-of-state plaintiff against a reservation Indian in that there were no off-reservation acts by the defendant in Montana sufficient to vest the state court with jurisdiction over him.

In Flammond, the plaintiff mother brought an action in the Montana district court seeking to enforce child support payments against the defendant father under Montana's Uniform Reciprocal Enforcement of Support Act (hereinafter "URESA"). *Id.* 472. The couple was married in Montana; they then moved to California. *Id.* The wife was a non-Indian; the husband was an enrolled member of the Blackfeet Tribe. *Id.* Upon the couple's separation, the mother remained in California and established residency, and the father moved back to Montana and lived on the Blackfeet reservation. *Id.* The mother subsequently filed a petition under the state of California's URESA law seeking monthly child support. *Id.* The California Superior Court found that the husband had a duty to provide child support and ordered the filing of an enforcement action in Montana against the husband. *Id.* The wife brought an action in Montana, and the husband subsequently moved to dismiss the action alleging that the state of Montana had no jurisdiction over him. *Id.*

In holding that the district court did not have subject matter jurisdiction to entertain the action, the Montana

Court stated that "where as here, neither the state nor the tribe has complied with the current federal enabling statutes, 25 U.S.C. 1321-1326, regulating the extension of state civil and criminal jurisdiction to Indian reservations, Montana may not exercise subject matter jurisdiction over transactions arising on Indian reservations . . . unless the transaction entails 'significant' or 'substantial' contacts with the state outside of reservation boundaries." [13] (Citations omitted.) *Id.* 472. The court concluded that "here there are absolutely no off-reservation acts in Montana sufficient to vest state courts with jurisdiction over the respondent, a reservation Indian. The only off-reservation acts occurred in California. It is well-settled that a reservation Indian's domicile on the reservation is not an in-state contact which grants jurisdiction to state courts. *Id.* 473, *citing Fisher v. District Court*, 424 U.S. 382, 96 S. Ct. 943, 47 L. Ed. 2d 106 (1976); *Kennerly v. District Court*, 400 U.S. 423, 27 L. Ed. 2d 507, 91 S. Ct. 480 (1971); *Williams v. Lee, supra*, 358 U.S. 217. The Flammond court clearly held that the reservation was outside the territorial jurisdiction of the state of Montana.[14] *Id.*

This court's analysis is framed by jurisdictional reference points gleaned from Wells, *Flammond and Vega v.*

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[13] The Montana court cited to numerous cases to demonstrate the type of off-reservation contacts they had in mind. These activities included employment contracts entered into off the reservation, actions involving loans to Indians obtained off the reservation, marriage off the reservation, among others.

[14] In holding thus, the Montana court commented that "it is not our purpose to deny Ms. Flammond a forum. We have no choice but to apply the law as it has been declared by the United States Supreme Court . . . It appears that there is no appeal from a tribal court ruling to the federal court system . . . However, that is not an argument in favor of state court jurisdiction. A state may not extend its jurisdiction by judicial fiat no matter how compelling the policy considerations for doing so may seem if there is no legal basis to support state jurisdiction." *Id.* 474.

Medina, 549 N.W.2d 507 (Iowa 1996).[15] First, federal law has not preempted the state's jurisdiction over Indians involving dissolutions of marriage. Second, residence on a reservation located within the territorial boundary of a state does not satisfy the requirement that a party be domiciled within a state for purposes of granting a dissolution of marriage subject to full faith and credit. Third, Indians or non-Indians, such as the plaintiff here, domiciled off of the reservation, but within the geographical boundary of the state, are treated no differently than any other resident of the state for purposes of divorce actions. Fourth, Indians domiciled on the reservation may be subject to state court jurisdiction if they have sufficient contacts with the state to give the state a strong interest in the matter.

Applying the above-mentioned analysis to the present case, this court is confronted by a dissolution proceeding between a non-Indian plaintiff and an Indian defendant concerning events which occurred off the reservation. Thus, this case is not one where the tribe could assert exclusive jurisdiction over the matter, assuming there was an appropriate tribal forum in which to bring the dispute. However, the non-Indian plaintiff is not a resident of Connecticut for purposes of 46b-44. While the dispute is between an Indian and a non-Indian, giving the tribe less of a jurisdictional interest, Connecticut courts can only exercise jurisdiction if one of the parties is a resident of Connecticut for purposes of 46b-44.

The subject matter of this dispute, the breakup of the marriage, neither occurred on the reservation nor in the state of Connecticut. While the couple was married in Connecticut, the parties lived most of their married lives in Florida. When the couple returned to the area, the plaintiff established residency in Rhode Island and the

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[15] In Vega, the Iowa Supreme Court found jurisdiction for reimbursement from a reservation father of AFDC benefit paid to a mother for a child conceived off the reservation.

defendant moved to the Mashantucket reservation. While these contacts do not weigh in favor of tribal jurisdiction, neither do they weigh in favor of jurisdiction by the state of Connecticut.

The Wells case is most closely analogous to the facts currently before this court. The Wells court, as this court must, had to have residency over one of the parties before it could acquire subject matter jurisdiction. *Wells v. Wells, supra.* While the Wells case stands for the proposition that a reservation Indian cannot use his or her residency as a shield against a state court action where the party bringing the action is domiciled in that state, the Wells court did hold that the reservation was not a part of South Dakota; it was separate and distinct, and only the domicile of one of the parties in that state and off the reservation gave the court jurisdiction. *Id.*

While less analogous, the Flammond case also has a telling similarity to the facts in this case. The plaintiff mother was domiciled out of state. The defendant father was domiciled on a reservation in Montana, and the "cause of action" accrued in yet a third state. *Flammond v. Flammond, supra.* In concluding that it could not exercise jurisdiction in the matter, the court determined that the defendant's residence on the reservation was not a sufficient contact in and of itself to give the court jurisdiction. *Id.* 473.

The United States Supreme Court has stated that "under our system of law, judicial power to grant a divorce—jurisdiction, strictly speaking—is founded on domicile . . . The domicile of one spouse within a State gives power to that State . . . to dissolve a marriage wheresoever contract . . . Divorce, like marriage, is of concern not merely to the immediate parties. It affects personal rights of the deepest significance." (Citations omitted.) *Williams v. North Carolina,* 325 U.S. 226, 230, 89 L. Ed. 1577, 65 S. Ct. 1092 (1944). Divorce

deeply affects not merely the individuals involved in the action but also the communities in which they reside. Rhode Island, by vitrue of the plaintiff's residence, has an interest in the outcome of the divorce proceeding. The Mashantucket Pequot Tribe, by vitrue of the defendant's residency and tribal membership, has an interest in the outcome of the proceeding. This court fails to find a corresponding interest for the state of Connecticut.

For the foregoing reasons, the court concludes that a Mashantucket tribal member residing on the reservation does not satisfy the residency requirement of 46b-44.[16] In ruling thus, this court does not question the previous ruling of valid in personam jurisdiction over the defendant. This court is faced with the peculiar situation in which an out-of-state plaintiff brings a divorce action against a Mashantucket Pequot tribal member living on the reservation. Whether the tribal court has subject matter or personal jurisdiction over this dissolution is not a proper concern of this court. Clearly, even if the tribal court has subject matter jurisdiction over this matter, personal jurisdiction must be validly obtained if the decrees of the tribal court are to be free from collateral attack and entitled to full faith and credit. The defendant's motion to dismiss is granted on the ground that this court lacks subject matter jurisdiction to hear the case.

Kevin E. Booth, J.

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[16] This notwithstanding the fact that reservation Indians vote and obtain driver's licenses in Connecticut. The court recognizes the logic of Justice Harrison's dissent in Flammond, supra at 474, when he writes:

> "I am mindful that the majority is in keeping with the trend of case law in this area, but I cannot in good conscience support a legal trend which operates upon the inequitable and unfair premises that some citizens can be citizens for the purposes of state benefits, yet escape responsibility by denial of that citizenship when a judgment . . . may be rendered against him."

However, like Justice Harmon's colleagues on the Montana Supreme Court, the court is bound to follow the law as it finds it.

Supreme Court, U.S.
FILED
APR 20 1998
CLERK

No. 97-1336

In The

Supreme Court of the United States

October Term, 1997

OWEN CHARLES,

Petitioner,

vs.

MARILYN CHARLES,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Connecticut

RESPONDENT'S BRIEF IN OPPOSITION

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12 pp

QUESTION PRESENTED FOR REVIEW

Whether the State of Connecticut Supreme Court correctly decided that the Mashantucket Pequot Indian Settlement Act of 1983 conferred civil jurisdiction upon the state of Connecticut in a private dissolution action pursuant to 25 U.S.C. §§ 1322 and 1755.

PARTIES TO PROCEEDINGS BELOW

Respondent agrees with the Petitioner's list, Pet., p. 1.

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OPINION BELOW

Respondent agrees with Petitioner's statement.

STATEMENT OF JURISDICTION

Respondent agrees with Petitioner's statement.

STATEMENT OF THE CASE

The Respondent agrees with the Petitioner's STATEMENT OF THE CASE (Pet., pp. 3-6) *except* that the State Supreme Court found that in enacting the Settlement Act, Congress intended to confer, *i.e.* grant, both civil and criminal jurisdiction to the state of Connecticut *without* the need for any further state or Tribal action. (Emphasis added).

REASONS FOR DENYING THE WRIT

The Connecticut Supreme Court's decision in this case is a direct application of its well reasoned decision in *State v. Spears*, 234 Conn. 78, 662 A.2d 80, *cert. denied*, 516 U.S. 1009, 116 S. Ct. 565, 133 L. Ed. 2d 490 (1995).

The action before this Court is a civil dissolution of marriage. Its significance does not extend beyond the private interests of the husband and wife who are the only parties herein. The Mashantucket Pequot Tribal Nation is not a party to this action. It is a matter between a husband and wife and has no effect on tribal sovereignty or self-government. There are no important issues of Federal law involved here, the case sets no precedent and the issue is unlikely to reoccur.

I.

THE DECISION OF THE CONNECTICUT SUPREME COURT RELIED UPON AND IS CONSISTENT WITH THE DECISIONS OF THE UNITED STATES SUPREME COURT AND STATE LAW.

The assumption of state civil jurisdiction over the Petitioner in this action is based upon a direct application of the rational used by the Connecticut Supreme Court in its decision in the *Spears* case. (The *Spear's* decision was denied Certiorari on December 4, 1995).

In *Spears*, after a exhaustive and deliberate analysis of the provisions within the Mashantucket Land Claims Settlement Act of 1983[1], Federal law and statutes, the Connecticut Supreme Court concluded that the state had acquired criminal jurisdiction over the Mashantucket reservation.

Here, the Connecticut Supreme Court was again asked to evaluate the provisions of the Settlement Act in order to determine whether the state had been granted civil jurisdiction over the Mashantucket Pequot Indians and reservation land. The court unanimously concluded that the same principals of statutory construction, Federal law and rational employed in *Spears* to establish state criminal jurisdiction were equally applicable to the civil jurisdiction question raised in this case.

The Settlement Act reflects a compromise settlement between the federal government, the state of Connecticut and the tribe over a civil land claims action. The tribe "was

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1. The Mashantucket Pequot Indian Claims Settlement Act of 1983, Public Law 98-134, § 2, Oct. 18, 1983, 97 Stat. 851, codified at 25 U.S.C. §§ 1751-60.

represented in the action as well as in the hearings before Congress, and manifested its consent to the terms of the Settlement Act." 25 U.S.C. § 1751(e). *Spears*, at 83. At the time the Settlement Act was enacted, there was no tribal court and it was clearly the intent and desire of the Mashantucket Pequot tribe to have continuing civil jurisdiction in the state of Connecticut.

In reaching its decision, the Connecticut Supreme Court relied upon this Court's determination that the only mechanism by which a tribe could manifest its consent to state jurisdiction is by the provisions set forth in 25 U.S.C. § 1326. *Kennerly v. District Court of Montana*, 400 U.S. 423, 429, 91 S. Ct. 480, 483, 27 L. Ed. 2d 507 (1971). The Court was equally guided by *Negonsott v. Samuels*, 113 S. Ct. 1119, 1122 (1993), where this Court held that in determining the effect of a statute, "[o]ur task is to give effect to the will of Congress. . . . An enactment should be read so as to give effect to every clause and word of the statute." (Internal quotations marks omitted).

In applying the above principals, the Connecticut Supreme Court has consistently held that 25 U.S.C. § 1755 of the Settlement Act effectively eliminated the consent provision contained in section 1326 and was an "immediate, definitive grant of state jurisdiction . . ." not requiring any further Tribal consent. *Spears* at 87. (*Also see* Pet., p. 2).

Again here, the Court confirmed its *Spears* holding and reiterated its conclusion that the Settlement Act was in itself tribal consent to state jurisdiction; "[i]n agreeing to the Settlement Act's provisions, . . . the tribe relinquished its right to require its consent to state jurisdiction". *Charles v. Charles*, 243 Conn. 255, 701 A.2d 650, 655 n.15 (Conn. 1997).

It follows then that, under 25 U.S.C. § 1322,

> those civil laws of [Connecticut] that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

25 U.S.C. § 1322(a).

The Petitioner's residence on the reservation can not enable him to escape the jurisdiction of the state of Connecticut in an action for dissolution of marriage.

II.

THE MATTER BEFORE THIS COURT IS A CIVIL ACTION FOR DISSOLUTION OF MARRIAGE. IT HAS NO SIGNIFICANCE BEYOND THE PRIVATE INTERESTS OF THE HUSBAND AND WIFE PARTIES HEREIN.

The only parties to this action for dissolution for marriage are the Petitioner husband and Respondent wife. The Mashantucket Pequot Tribe is not a party to this action and there are no tribal assets, property, rights or interest being sought. The parties were married off the reservation, in New Haven, Connecticut and they never resided together on the Mashantucket reservation. The jurisdiction of the state of Connecticut is confined to and concerned only with the rights and interests of the respective parties.

The Petitioner attempts to use his status as a Mashantucket Pequot tribal member to transform a dissolution of marriage civil action into a Federal matter of tribal sovereignty. This court has ruled that

> tribal sovereignty does not impede state court jurisdiction unless the exercise of state-court jurisdiction in [the] case would interfere with the right of the tribal Indians to govern themselves under their own laws.

Golden Hill Paugussett Tribe of Indians v. Town of Southbury, 231 Conn. 563, 651 A.2d 1246, 1253 (1995), (Internal quotation marks omitted.) *citing Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C.*, 467 U.S. 138, 104 S. Ct. 2267, 81 L. Ed. 2d 113 (1984).

When appropriate, issues involving tribal sovereignty are considered in decisions involving Indians, but, "[o]ur recognition of tribal sovereignty does not . . . render all matters touching upon tribal decisions nonjusticiable." *Golden Hill Paugussett Tribe of Indians v. Town of Southbury*, 231 Conn. 563, 651 A.2d 1246, 1253 (1995). The right of an individual Indian Citizen to sue or be sued in the courts of this land has long been recognized by our judicial system. *Poafpybitty v. Skelly Oil Company*, 390 U.S. 365, 370, 88 S. Ct. 982, 985, 19 L. Ed. 2d 1238, 1243.

A suit whose substance is domestic relations generally will not be entertained in federal court even if it is brought under the guise of a federal question. *Firestone v. Cleveland Trust Co.*, C.A. 6 (Ohio) 1981, 654 F.2d 1212; the whole subject of domestic relations belongs to laws of the states and not the laws of the United States. *Wickins v. Rogers*, C.A. 4 (S.C.) 1978, 581 F.2d 399. An action for a dissolution of marriage is a civil action. *Smith v. Smith*, 150 Conn. 15, 19, 183 A.2d 848 (1962).

In *Rice v. Rehner*, 103 S. Ct. 3291, 3295 463 U.S. 713, 77 L. Ed. 2d 961 (1983), this Court recognized that

> Congress has to a substantial degree opened the doors of reservations to state laws. . . . even on reservations, state laws may be applied unless such application would interfere with reservation self-government or would impair a right granted or reserved by federal law.

(Internal quotations omitted) (Citations omitted). In addition, "state laws may be applied to tribal Indians on their reservations if Congress has expressly so provided." *California v. Cabazon Band of Mission Indians*, 107 S. Ct. 1083, 1087, 480 U.S. 202, 94 L. Ed. 2d 244 (1987). The Settlement Act expressly provides Congressional approval for the state of Connecticut to assume civil jurisdiction over the Mashantucket reservation.

Indeed, the failure of Connecticut to recognize and exercise its civil jurisdiction over Indians residing on reservation lands could violate their civil rights under the Equal Protection and Due Process clauses of the Fourteenth Amendment. *Golden Hill Paugussett Tribe of Indians v. Town of Southbury*, 231 Conn. 563, 651 A.2d 1246 (1995), *citing Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C.*, 467 U.S. 138 104 S. Ct. 2267, 81 L. Ed. 2d 113 (1984). "Indian tribes have vestiges of sovereignty which must be guarded carefully, but reservations are not analogous to foreign states." *White v. Califano*, 437 F. Supp. 543, 547 (1977).

The Petitioner is a citizen of the state of Connecticut because Indians, as citizens of the United States, automatically become citizens of the state of their residence. *Deere v. State of New York*, 22 F.2d 851, 852 (D.C. N.D. N.Y. 1927). Accordingly, he is afforded all of the privileges and benefits of such citizenship and is subject to state civil jurisdiction.

The action before this Court is not a issue of Federal importance or tribal sovereignty. In reaching its decision, the

Connecticut Supreme Court considered and was guided by well established principals of statutory interpretation to effectuate the expressed Congressional purpose and intent contained within the language in the Settlement Act. The correct decision was reached.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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